

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:12-CR-00032-F-1
No. 4:15-CV-00035-F

CHARLES RICHARD MOORE, JR.,)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
Respondent.)

O R D E R

This matter is before the court on Charles Richard Moore, Jr.'s Motion for Certificate of Appealability [DE-141]. In his motion, Moore argues that he has made a substantial showing of the denial of a constitutional right, pursuant to 28 U.S.C. § 2253(c)(2), as to the following issues:

(1) Whether there is a reasonable probability that, but for counsel's unprofessional errors, Moore would not have pleaded guilty and otherwise been convicted of a violation of 18 U.S.C. § 924(c)(1), because Moore lacked advance knowledge where there is no evidence that a firearm was actually used in furtherance of the robbery. *See Rosemond v. United States*, 134 S. Ct. 1240, 1245 (2014); and

(2) Whether Moore was under the erroneous belief, because his trial counsel's conduct fell below an objective standard of reasonableness, that he had to plead guilty to two separate counts of an indictment where he was not guilty of one of the counts (the gun charge). *See Strickland v. Washington*, 466 U.S. 668 (1984).

A certificate of appealability will not issue unless there has been "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find

that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). However, when a court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

For the reasons addressed fully in the court's March 16, 2016 Order [DE-142], Moore's issues are not supported by the facts, as determined by the court following the March 3, 2016 evidentiary hearing.¹ The court finds that Moore has not made a substantial showing of the denial of a constitutional right. Consequently, Moore's Motion for Certificate of Appealability [DE-141] is DENIED.

SO ORDERED.

This the 24 day of March, 2016.



James C. Fox
Senior United States District Judge

¹ The instant Motion for Certificate of Appealability [DE-141] was filed just hours before the court issued its March 16, 2016 Order [DE-142]. In the March 16, 2016 Order, the court denied a certificate of appealability.